ORDINANCE No. 190203

COUNCIL BILL No. 113426

AN ORDINANCE relating to the Police Department and the Firearms Review Board citizen observer; and creating additional positions on the Firearms Revie; Board for an alternate citizen observer and two bargaining representative observers.

COMPTROLLER FILE No.

Introduced: 00	9 2 008 By:	COMPTON
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Referred:	To	Technology Committee
Referred:	To:	
Reported: 12-41-00	Second Reading	1
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The City of Seattle-Legislativ

REPORT OF COMMITTEE

ംnorable President:	
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to vich was referred the with	in Council Bill No.
report that we have considered	the same and respectfully recommend
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12-11-00 Pa-	sed As Amended
<u> </u>	Sed As Amended *Cosed: Dago, Mal
Law Department	
	Committee Chair

REPORT OF COMMITTEE

Date Reported and Adopted

	Honorable President:				
	Your Committee on				1
	to which was referred the within Council Bill No	.	-		
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	12-11-00 Passed As Amended 20	·			
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AN ORDINANCE relating to the Police Department and the Firearms Review Board citizen observer; and creating additional positions on the Firearms Review Board for an alternate citizen observer and two bargaining representative observers.

WHEREAS, the Seattle Police Department has an internal Firearms Review Board that is convened to investigate and review the circumstances attending each discharge of a firearm by an officer; and

WHEREAS, the Board originally consisted of appointees from within the Police Department; and

WHEREAS, to increase the confidence of the general public in the review process the City adopted Ordinance 118482, which added a non-voting citizen observe to the Firearms Review Board; and

WHEREAS, the City has negotiate in good faith with the Seattle Police Officers' Guild and the Seattle Police Management Association concerning that citizen observer in accordance with an Order of the Public Employment Relations Commission; Now Therefore,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. In accordance with the settlement reached among the City of Seattle, with the Seattle Police Officers' Guild and the Seattle Police Management Association, the Law Department is hereby authorized for and on behalf of the City to execute a Memorandum Of Agreement with the Seattle Police Officers' Guild and the Seattle Police Management Association to resolve unfair labor practice proceedings initiated by the Seattle Police Officers' Guild and the Seattle Police Management Association. This Memorandum Of Agreement, that amends Ordinance Number 118482, is substantially in the form attached hereto and identified as the "Memorandum Of Agreement" among the City of Seattle, with the Seattle Police Officers' Guild and the Seattle Police Management Association.

Section 2. Ordinar. Number 118482 is hereby amended as follows:

Section 1. Firearms Review Board ((Citizen))Observer Positions Created; Purpose

OTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS N

JJ:jj 10/02/00 FRBOrd1.doc (Ver. 1)

There ((is))are created a Firearms Review Board Citizen Observer position (hereinafter "Citizen Observer"), a Firearms Review Board Alternate Citizen Observer position (hereinafter "Alternate Citizen Observer"), and two Firearms Review Board Bargaining Representative Observer positions (hereinafte "Representative Observer") with authority to attend each meeting of the Seattle Police Department Firearms Review Board as a non-voting observer((, to report annually to the Mayor and Council on the proceedings of the Firearms Review Board,)) and to increase the confidence of the general public in the review process. Additionally, The Citizen Observer, or Alternate Citizen Observer if applicable, shall report annually to the Mayor and Council on the proceedings of the Firearms Review Board.

Section 3. Appointment of ((the Citizen))Observers

A. The Mayor shall appoint as his or her representative, a Citizen Observer, subject to confirmation by the City Council, to observe the proceedings of the Firearms Review Board. The Citizen Observer shall serve a term of three (3) years and may be reappointed to one subsequent three-year term by the Mayor, subject to confirmation by the City Council. Terms shall begin on the effective date of this ordinance.

The Citizen Observer may be removed from office by the Mayor by filing a statement of reasons for removal with the City Council. The Citizen Observer shall receive a stipend of \$150 for each hearing of the Firearms Review Board that she or he attends.

B. The Mayor shall appoint as his or her representative, an Alternate Citizen Observer, subject to confirmation by the City Council, to serve in the place of the Citizen Observer where the Citizen Observer is unavailable and/or is unable to serve. The Alternate Citizen Observer shall serve a term of three (3) years and may be reappointed to one subsequent three-year term by the Mayor, subject to confirmation by the City Council. Terms shall begin on the effective date of this ordinance.

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The Alternate Citizen Observer may be removed from office by the Mayor by filing a statement
of reasons for removal with the City Council. The Alternate Citizen Observer shall receive a stipend of
\$150 for each hearing of the Firearms Review Board that she or he attends in place of the Citizen
Observer. MARA Representative Observer from the subject employeds bearing

unit shall serve as a non-voting member of the Firearms Review Board C. The President of the Seattle Police Officers' Guild and the President of the Seattle

Police Management Association shall each appoint as his or her representative, a Representative Observer to observe the proceedings of the Firearms Review Board.

- $((B))\underline{D}$. The ((Citizen))Observers should possess the following qualifications and characteristics:
 - 1. A reputation for integrity and professionalism, as well as the ability to maintain a high standard of integrity in the office;
 - 2. Demonstrated professional experience in criminal justice and/or constitutional law;
 - ((2))3. A commitment to and knowledge of the need for and responsibilities of law enforcement, as well as the need to protect basic constitutional rights of all affected parties;
 - 4. Some experience in fact finding;
 - ((3))5. The potential for gaining the respect of departmental personnel and the citizens of this City;
- ((4))6. The ability to work effectively with the Mayor, City Council, City Attorney, Chief of the Department, departmental personnel, and citizens; and
- $((5))\underline{7}$. The ability, as shown by previous experience, to work with diverse groups and individuals.

Section 4. Duties of the ((Citizen))Observers

A. Observe the proceedings of the Firearms Review Board

The ((Citizen))Observers shall observe the proceedings of the Seattle Police Department's Firearms Review Board((-)) but shall be excused during the deliberations and voting of the Firearms Review Board. In all other respects, ((T))the ((Citizen))Observers will function as ((a))non-voting members of the Firearms Review Board.

B. Confidentiality of the Proceedings

In discharging his or her responsibilities, ((The Citizen))each Observer shall protect the confidentiality of the proceedings of the Firearms Review Board. The ((Citizen))Observers shall not identify any subjects of review or describe particular incidents in any public report required by this chapter or in any other public forum.

C. Service of Alternate Citizen Observer

The Alternate Citizen Observer shall serve in the place of the Citizen Observer where the Citizen Observer is unavailable. The Alternate Citizen Observer shall serve in the place of the Citizen Observer where a subject employee or a subject employee's bargaining representative requests that the Citizen Observer not attend and/or observe the proceedings of the Firearms Review Board in a particular case based upon concerns related to an appearance of fairness, or if the Citizen Observer is demonstrated to have violated the confidentiality provisions of the Ordinance, or based upon other concerns of similar gravity.

$((C))\underline{D}$. Citizen Observer to Prepare Annual Report

The Citizen Observer, or Alternate Citizen Observer if applicable, shall prepare an annual report of his or her observations about the proceedings of the Firearms Review Board. This report shall be forwarded to the Mayor, City Council, Chief of Police, City Attorney, and City Clerk for filing as a

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public record. The Citizen Observer's or Alternate Citizen Observer's report shall be prepared in accordance with the following provisions:

- 1. The Citizen Observer's <u>or Alternate Citizen Observer's</u> report shall contain a general description of the Firearms Review Board proceedings she or he has attended in the past year, including, but not limited to:
- a. the number of proceedings attended by the Citizen Observer and the Alternate Citizen Observer.
- b. a breakdown of the recommendations of the proceedings (e.g., whether the discharge of the firearm was determined by the Chief of Police as justified or unjustified);
- c. a summary of issues, problems, and trends noted by the Citizen Observer or Alternate <u>Citizen Observer</u> as a result of his or her review;
 - d. any recommendations that the Department consider additional officer training; and
- e. any recommendations that the Department consider policy or procedural changes within the framework of applicable law and labor agreements.
- 2. The Citizen Observer's <u>or Alternate Citizen Observer's</u> report shall not contain any recommendations concerning any particular police officer or information leading to the identity of a specific incident, nor shall the report comment upon or make recommendations concerning potential civil or criminal liability of specific employees, police officers, or citizens.
- 3. The Citizen Observer or Alternate Citizen Observer shall deliver a confidential preliminary draft of his or her annual report to the Chief of Police for review and comment. The Chief of Police shall report and comment on the preliminary report within twenty (20) working days after r ceipt of the report. The Citizen Observer or Alternate Citizen Observer shall submit the final report within

thirty (30) days after receipt of the Chief's comments. The Citizen Observer's or Alternate Citizen Observer's final report shall be submitted no later than the first day of December each year.

4. The Chief of Police shall forward to the Mayor, City Council, City Attorney, and City Clerk within twenty (20) working days of receipt of the Citizen Observer's or Alternate Citizen Observer's final report, the Chief's written comments on the report.

Section 5. Citizen Observer to Meet with the Mayor, City Council, and Chief of Police

The Citizen Observer, or Alternate Citizen Observer, if applicable, shall meet periodically with the Mayor, City Council, and the Chief of Police regarding recommendations to improve the firearms review process within the framework of applicable law and labor agreements.

Section 3. Any act consistent with the authority of and prior to the effective date of this ordinance is hereby ratified and confirmed.

Section 4. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance or the validity of its application to other persons or circumstances.

	The first section of the section of
	JJ:jj 10/02/00 FRBOrd1.doe (Ver. 1)
1	Section 5. This ordinance shall take effect and be in force thirty(30) days from and after its approval by
2	the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall
3	take effect as provided by Municipal Code Section 1.04.020.
4	
5	Passed by the City Council the 11th day of December, 2000, and signed by me in open
6	session in authentication of its passage this 12 day of December, 2000.
7	Massa et CO.
8	President of the City Council
9	Approved by me this 16th day of DECEMBER, 2000.
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11	Vaul Sall
12	and T
13	Filed by me this 19+ day of December, , 2000.
14	acting City Clerk
15	acting City Clerk
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MEMORANDUM OF AGREEMENT

WHEREAS, the City of Seattle (hereinafter referred to as the "City") is a first class charter city, organized in accordance with Washington Constitution Article XI, §10 and Chapter 35.22, RCW; and

WHEREAS, the City and the Seattle Police Officers' Guild (hereafter referred to as "SPOG") have been signatory to a collective bargaining agreement setting forth the wages, hours, and other terms and conditions of employment for members of the bargaining unit represented by SPOG; and

WHEREAS, the City and the Seattle Police Management Association (hereafter referred to as "SPMA") have been and are signatory to a collective bargaining agreement setting forth the wages, hours, and other terms and conditions of employment for members of the bargaining unit represented by SPMA; and

WHEREAS, on or about January 27, 1997 the City Council passed Ordinance Number 118482 creating a "Firearms Review Board Citizen Observer position (hereinafter "Citizen Observer") with authority to attend each meeting of the Seattle Police Department Firearms Review Board as a non-voting observer, to report annually to the Mayor and Council on the proceedings of the Firearms Review Board, and to increase the confidence of the general public in the review process"; and

WHERE, S, on or about February 6, 1997, the Mayor signed Ordinance Number 118482; and

WHEREAS, on or about February 4, 1997, SPOG, in response to the adoption of Ordinance Number 118482 and amendments to the Seattle Police Department Policies and Procedures Manual Section 1.305, filed an unfair labor practice complaint against the City with the Public Employment Relations Commission (hereinafter referred to as "PERC") that was docketed as Seattle Police Officers' Guild vs. City of Seattle, Case 13234-U-97-03218; and

WHEREAS, the City denied committing any unfair labor practice(s); and

WHEREAS, on or about June 11, 1997, SPMA, in response to the adoption of Ordinance Number 118482 and amendments to the Seattle Police Department Policies and Procedures Manual Section 1.305, filed an unfair labor practice complaint against the City with the PERC that was docketed as Seattle Police Management Association vs. City of Seattle, Case 13306-U-97-03245; and

WHEREAS, the City denied committing any unfair labor practice(s); and

WHEREAS, on or about April 27, 1999, Hearing Examiner Walter M. Stuteville issued Consolidated Findings of Fact, Conclusions of Law, and Order in the cases docketed as Seattle Police Officers' Guild vs. City of Seattle, Case 13234-U-97-03218

Memorandum of Agreement Page 1 of 6



and Seattle Police Management Association vs. City of Seattle, Case 13306-U-97-03245; and

WHEREAS, the City, SPOG, and SPMA have all appealed from Hearing Examiner Walter M. Stuteville's Consolidated Findings of Fact, Conclusions of Law, and Order; and

WHEREAS, the City, SPOG, and the SPMA wish to resolve the unfair labor practice proceeding without resort to further litigation; it is therefore

AGREED BY AND AMONG THE PARTIES HERETO, in consideration of the mutual promises contained herein and other good and valuable consideration, that:

- 1. As part of the appointment process contemplated by Section 3 of Ordinance Number 118482, the President of SPOG and the President of SPMA and/or their designee(s) will be allowed to sit in on the interviews of the final candidates for Citizen Observer and provide input during the interview process.
- Any bargaining unit employees involved in a Firearms Review Board investigation and review (hereinafter referred to as the "subject employee") will be afforded his/her Weingarten and Garrity rights.
- 3. The Seattle Police Department Policies and Procedures Manual Section 1.305, ¶I(A)(5) will be revised to read:

A bargaining unit representative shall be permitted to attend the Firearms Review Board, if requested by the subject employee, to provide representation in accordance with RCW 41.56.

4. The Seaule Police Department Policies and Procedures Manual Section 1.305, IV will be revised to read:

VI Citizen Observer

A. The Mayor shall appoint a Citizen Observer to the Firearm's review Board to observe and report on the Proceedings of the Board.

1. In addition to possessing the qualifications set forth in Section 3B of Ordinance Number 118482, the Citizen Observer shall possess the following qualifications and characteristics:

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⁴ The parties agree that Appendix A reflects the current state of the law with respect to representation in accordance with RCW 41.56.

Memorandium of Agreement Page 2 of 6

a. demonstrated professional experience in criminal justice and/or constitutional law, and,

b. some experience in fact-

finding.

- 2. The Citizen Observer shall be a non-voting observer and shall comply with all of the provisions of Ordinance 118482.
- a. The Citizen Observer shall be excused during the deliberations and voting of the Firearms Review Board.
- B. The Mayor shall appoint an alternate Citizen Observer who will serve in place of the Citizen Observer where the Citizen Observer is unavailable and/or is unable to serve.
- 1. The alternate Citizen Observer shall be selected in the same manner as the primary Citizen Observer.
- C. The subject employee or the subject employee's bargaining representative may request that the Citizen Observer not attend and/or observe the proceedings of the Firearms Review Board in a particular case if there are concerns related to an appearance of fairness, or if the Citizen Observer is demonstrated to have violated the confidentiality provisions of the Ordinance, or if there are other concerns of similar gravity.
- 1. Such a request shall be made within five days after receiving notification of the hear ag.
- 2. When such a request is timely made the alternate Citizen Observer shall be used for the hearing.
- 5. The Seattle Police Department Policies and Procedures Manual Section 1.305, will be revised to add a ¶VII that will read:

VII Bargaining Representative Observer

Memorandum of Agreement Page 3 of 6

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- A. A representative of the subject employee's bargaining unit shall serve as a non-voting member of the Firearms Review Board, in the same capacity, and subject to the same limitations, as the Citizen Observer.
- 1. The representative of the subject employee's bargaining unit will be excused during the deliberations and voting of the Firearms review Board.
- B. The representative of the subject employee's bargaining unit who serves as the non-voting member of the Firearms Review Board shall not be the same representative who represents the subject employee before the Firearms Review Board in accordance with RCW 41.56.
- 6. When records relating to the Firearms Review Board are requested pursuant to a public disclosure request, the subject employee's' bargaining representative will be notified of the request and be allowed a reasonable period of time, not to exceed two weeks from date of notification of the request, in which to seek a court order prohibiting disclosure of such records.
- 7. Hearing Examiner Walter M. Stuteville's April 27, 1999 Consolidated Findings of Fact, Conclusions of Law, and Order in the cases docketed as Seattle Police Officers' Guild vs. City of Seattle, Case 13234-U-97-03218 and Seattle Police Management Association vs. City of Seattle, Case 13366-U-97-03245 shall not be used as precedent in any other proceeding(s) involving the City and SPOG and/or the City and SPMA.
- 8. The City, SPOG, and SPMA will ask the ?ERC to suspend enforcement of Walter M. Stuteville's April 27, 1999 Consolidated Findings of Fact, Conclusions of Law, and Order in the cases docketed as Seattle Police Officers' Guild vs. City of Seattle, Case 13234-U-97-03218 and Seattle Police Management Association vs. City of Seattle, Case 13306-U-97-03245.
- 9. The City, SPOG, and SPMA will ask the PERC to agree that the Walter M. Stuteville's April 27, 1999 Consolidated Findings of Fact, Conclusions of Law, and Order in the cases docketed as Seattle Police Officers' Guild vs. City of Seattle, Case 13234-U-97-03218 and Seattle Police Management Association vs. City of Seattle, Case 13306-U-97-03245 shall have no precedential effect in any PERC proceedings involving the City and SPOG and/or the City and SPMA.
- 10. The City, SPOG, and SPMA will ask PERC to suspend the briefing schedule pending completion of the settlement discussions and the PERC approval

Memorandum of Agreement Page 4 of 6

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- 11. If the PERC does not agree to suspend enforcement of Walter M. Stuteville's April 27, 1999 Consolidated Findings of Fact, Conclusions of Law, and Order and/or to agree that Walter M. Stuteville's April 27, 1999 Consolidated Findings of Fact, Conclusions of Law, and Order shall have no precedential effect in any PERC proceeding(s) involving the City and SPOG and/or the City and SPMA, this Memorandum of Agreement shall be null and void and the parties will either continue discussing other alternatives to achieve the same goals and/or will request a new briefing schedule so that the appeals can be completed.
- 12. If the PERC agrees to suspend enforcement of Walter M. Stuteville's April 27, 1999 Consolidated Findings of Fact, Conclusions of Law, and Order and agrees that Walter M. Stuteville's April 27, 1999 Consolidated Findings of Fact, Conclusions of Law, and Order shall have no precedential effect in any PERC proceeding(s) involving the City and SPOG and/or the City and SPMA; then the parties shall withdraw their appeals.

IN WITNESS WHEREOF, we have set our hands this 15 day of agrid, 2000.

CITY OF SEATTLE

SEATTLE POLICE OFFICERS' GUILD

SEATTLE POLICE MANAGEMENT ASSOCIATION

Memorandum of Agreement Page 5 of 6

APPENDIX A

The parties agree that the following is the scope of a bargaining representative's right to provide representation to an subject employee in a Firearms Review Board proceeding in accordance with RCW 41.56 as of the date of the execution of the Memorandum of Agreement:

- The bargaining unit representative can counsel the subject employee, complying with all applicable bargaining agreements.
- 2. The subject employee may consult with the union representative before commencing an investigatory interview.
- 3. Once the Board asks the subject employee to give his/her version of what occurred, there will be no interruption from the bargaining unit representative.
- 4. Once active questioning begins of the subject employee, the bargaining unit representative my alert the officer to problems with the phrasing or scope of a question.
- a. Examples of the type of assistance which night be provided by the bargaining unit representative include: noting when questions are ambiguous or right to invoke; or interceding when questions become harassing or intimidating.
- i. The right of the bargaining unit representative to participate during the questioning process does not necessarily allow that representative to confer with the subject employee before every answer.
- 5. When a statutory privilege is not at issue, the representative cannot delay the subject employee's responses while the representative advises the officer whether or how to answer a question.
- a. Also, the representative and the subject employee is not free to interject comments whenever he/she wishes during the interview.
- 6. In the interest of maintaining an orderly process, the Board may reasonably require the bargaining unit representative to wait until the conclusion of questioning before seeking clarification of previous officer answers, bringing to light favorable facts the officer might have overlooked, suggesting other individuals who may have relevant knowledge, describing relevant practices, or advancing extenuating circumstances for the Board to consider.

Memorandum of Agreement Page 6 of 6

IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Letter of Understanding

In order to avoid any current or future misunderstanding concerning the use of the term "deliberations" in the Firearms Review Board ("FRB") Memorandum Of Agreement ("MOA"), the purpose of this Letter of Understanding is to explain that it was and continues to be the parties' intent to have the FRB operate much like a jury. As such, it was and continues to be the parties' intent to have the Chair of the FRB exclude observers (union and civilian) only after all evidence has been presented, the observers have been given a full opportunity to provide input, and the record has been closed. After exclusion of the observers (union and civilian) there will be no further opportunity for anyone to present any further testimony or evidence for the FRB's consideration.

This Letter of Understanding shall be attached to the MOA and each of the party's signature below shall signify its agreement to the Letter of Understanding.

SEATTLE POLICE OFFICERS' GUILD

Mike Edwards, President

SEATTLE POLICE MANAGEMENT ASSOCIATION

Dan Oliver, President

CITY OF SEATTLE

Labor Relations

Law Department

Letter of Understanding

Page No. 1 of 1

Draft No. 376

IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

e chair secretar del

STATE OF WASHINGTON - KING COUNTY

--SS.

125914 City of Seattle, Clerk's Office No. Ord Title On

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for anore than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CTOT:120203-206,210

was published on

12/28/00

The amount of the fee charged for the foregoing publication is the sum of \$0.00, which amount has been paid in full.

Subscribed and sworn to before me on

28/00

Notary public for the State of Washington,

residing in Scattle

Affidavit of Publication

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8th Avenus North, all as described in Section 1 below.

ORDINANCE NO. 129205

AN ORDINANCE ending to the evaluation of Seattle's which in our program; authorizing the execution, of an agreement with the Washington Traffic Stept Commission for financial assistance and the section of the sect

ocs, an by a three-fourths vote of the City Council.

ORDINANCE NO. 122268

AN ORDINANCE Proprieting and confirming the plat of "SP. Cloodwin Addition to Seattle," a replat of a portion of Saction of Seattle, a replat of a portion of Saction of Seattle, a replat of a portion of Seattle, a will be seat to seat the seat of the sea convenience were Yeve Thousand Dol-lant (2020), accepting the money when received, on the property of the Police Department and the disease from the Police Department and the disease of firming prior acts, and making a reimbur-gard of the City Council.

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Date of official publication in Daily 18, 2000.

City of Seattle

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or turtner information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 120203

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AND ORDINANCE NO. 140204

Labe Union CSO Project affecting a portion of Board of the Board Addition to the City of Seattle and a portion of the Vacated